

Appl. No. 09/873,100  
Amdt. Dated October 15, 2003  
Reply to Office Action of July 17, 2003

REMARKS

As explained in detail below, applicants respectfully submit that claims 1-35 as originally filed are patentable over the cited art.

Claims 1-35 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Jeffcoat et al., U.S. Patent No. 6,541,060.

The rejection is respectfully traversed, for failing to consider either the claimed invention or the cited prior art as a whole.

The rejection acknowledges (page 3, middle paragraph) that intensifying the pulpy or gritty texture of the product is not taught by Jeffcoat et al., but overlooks the fact that the accomplishment of this property is indeed the essence of the method of the present invention. In this context, the Examiner's attention is respectfully directed to the specification at page 1, line 19, where pulpy and/or gritty texture is described as characterized by the presence of coarse structured particles.

What is accomplished according to the disclosure of Jeffcoat et al. is a different property, such as improved thickening using less starch than if other starches were used (cited in

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the rejection at page 2, bottom paragraph) and even a property inconsistent with the claimed pulpy or gritty texture such as being flowable and clear.

The rejection also overlooks the following disclosure of Jeffcoat et al. at the second paragraph of the specification:

Many different starch products are known which originate from, inter alia, maize, tapioca, rice, and potato. In many cases, however, it is necessary to modify the native starches, via chemical, biochemical, and/or physical means, in order to produce the distinct properties necessary to suit particular applications.

Jeffcoat et al., col. 1, lines 21-26 (emphasis added).

Thus, one skilled in the art is reminded that particular applications require different properties and methods to accomplish them.

It should also be noted that according to Jeffcoat et al., the disclosed unexpectedly high viscosity such that the desired viscosity can be provided to a composition while using substantially less starch is the surprising discovery of the effectiveness of Jeffcoat's modified starch according to the disclosed invention. One skilled in the art not knowing the present invention is here taught, consistent with the above reminder, that achievement of different properties by the disclosed technology is not something to be expected.

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Moreover, the texture of products disclosed by Jeffcoat et al. is also described as smooth. This, too, is contrary to the pulpy or gritty texture according to the present invention.

The rejection's characterization of the essential property of pulpy or gritty texture according to the invention as "not quantitatively measured and organoleptic" (bottom paragraph of page 3) overlooks the fact that these properties are standardized and objectively defined according to ISO standards 11036 and 11035 referred to in the specification at page 2, lines 9-19, and page 3, lines 1-8, respectively.

With respect to tomato ketchup (claims 20-21 and 24-29) and mashed potato products (claims 22-23 and 30-35) it should be noted that Jeffcoat et al. provide neither disclosure nor suggestion of such products with pulpy or gritty texture. Jeffcoat et al. discourages addition of a starch product to tomato ketchup by the statement:

[S]tarch adds opacity to foodstuffs. In many foodstuffs, it is desirable to have more clarity, not only to produce clearer foodstuffs, but also to provide truer colors.

Jeffcoat et al., col. 2, lines 15-17.

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It is respectfully submitted that claims 1-35 define patentable subject matter and are in order for prompt allowance, which is respectfully solicited.

With reference to the provisional rejection under the doctrine of obviousness-type double patenting, enclosed herewith is a terminal disclaimer referencing the co-pending application. The provisional rejection, therefore, is now moot.

Respectfully submitted,



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